

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SOUTH METRO HUMAN SERVICES,

Employer

and

Case Nos. 18-RC-17751
18-RC-17752

AMERICAN FEDERATION OF STATE,
COUNTY, AND MUNICIPAL EMPLOYEES
COUNCIL 5,

Petitioner

ORDER

This case involves mail ballot elections held in two bargaining units of the Employer's non-professional employees. The ballot counts were conducted on May 18, 2011, and the tallies showed that no labor union had been selected by either unit.

At 4:54 p.m. on May 25, the last day for filing objections to the election, the Petitioner filed objections to both elections by fax to the Regional Office.¹ The Regional Office closes at 4:30 p.m. Section 102.111(b) of the Board's Rules requires that, in order to be considered timely filed, documents "must be received by the . . . officer or agent designated to receive such matter before the official

¹ The objections allege that the Employer conducted surveillance of employees, paid employees mileage for attending antiunion meetings, increased wages to influence employees' vote in the election, threatened employees with loss of benefits if they voted for the Petitioner, and disenfranchised "on-call" employees by advising them that they were ineligible to vote. The objections also assert that employees in the Mental Health Counselor II position should have been included in a service and maintenance bargaining unit.

closing time of the receiving office on the last day of the time limit”² By letter dated May 26, the Regional Director notified the Petitioner that he had rejected the objections as untimely, and he certified the results of the elections.

By letter dated May 27, the Petitioner requested that the Regional Director reconsider his decision. By letter dated May 31, the Regional Director denied the request, citing Section 102.111(b) and noting that the Petitioner’s own May 27 letter acknowledged that the objections were received after the Regional Office’s official closing time.

On June 2, 2011, the Petitioner filed a Request for Review of Rejection of Objections and Certification of Elections, requesting that the Board reverse the Regional Director’s decision and direct the Regional Director to consider the Petitioner’s objections.³ The Petitioner contends, *inter alia*, that no party will be prejudiced if the objections are accepted. The Petitioner reasons that an election was conducted on April 28 in a third unit, consisting of the Employer’s professional employees, that a hearing on challenges and objections to that election was held on May 16 through May 24, and that the issues raised in that proceeding were substantially similar to those raised in the objections here.

We find merit in the Petitioner’s argument. The Petitioner contends, and the Employer does not refute, that the objections filed in the professional unit and

² Exceptions exist for electronically filed documents, which are timely if received by 11:59 p.m. on the last day for filing, and for documents that are deposited with a delivery service in time for delivery on the due date, but in no event later than the day before the due date. See Sec. 102.111(b); http://www.nlr.gov/sites/default/files/documents/199/electronic_filings.pdf. Neither exception applies here.

³ We have treated the Petitioner’s “Request for Review” as a Motion for Special Permission to Appeal the Regional Director’s ruling rejecting the objections.

those in the non-professional units substantially overlap and that the hearing in regard to the professional unit covered most of the issues raised in the objections at issue here. Thus, by the time the objections in the present case were due, the Employer was already on notice of the substantive issues raised by the Petitioner's objections, and therefore will suffer no prejudice if the objections are accepted despite the 24-minute filing delay.

Accordingly, we find that the Petitioner's objections should be accepted. We therefore grant the Petitioner's motion for special permission to appeal, and we reverse the Regional Director's ruling that the Petitioner's objections should be rejected as untimely. We emphasize that our ruling is confined to the limited circumstances of this case, where the delay was exceedingly brief, the parties have already litigated substantially overlapping objections involving a contemporaneous organizing campaign at the same employer, and the Employer will suffer no prejudice if the objections are accepted.⁴

IT IS THEREFORE ORDERED that the appeal is granted and that the Petitioner's objections filed May 25, 2011 be accepted, and that the Petitioner shall furnish to the Regional Director the evidence available to it to support the objections within 7 days of the date of this Order, or such additional time as the Regional Director may allow.

Dated, Washington, D.C., August 18, 2011.

CRAIG BECKER, MEMBER

MARK GASTON PEARCE, MEMBER

⁴ Member Hayes, dissenting, would affirm the Regional Director's rejection of the untimely filed objections in the absence of a showing that the rejection was an abuse of discretion.